



Control Number: 49737



Item Number: 313

Addendum StartPage: 0

SOAH DOCKET NO. 473-19-6862
PUC DOCKET NO. 49737



APPLICATION OF SOUTHWESTERN	§	
ELECTRIC POWER COMPANY FOR	§	
CERTIFICATE OF CONVENIENCE	§	PUBLIC UTILITY COMMISSION
AND NECESSITY AUTHORIZATION	§	
AND RELATED RELIEF FOR THE	§	OF TEXAS
ACQUISITION OF WIND	§	
GENERATION FACILITIES	§	

GOLDEN SPREAD ELECTRIC COOPERATIVE INC.'S
REPLY BRIEF

I. INTRODUCTION

Golden Spread Electric Cooperative, Inc. (“Golden Spread”) respectfully submits this reply brief (“Reply Brief”) regarding Southwestern Electric Power Company’s (“SWEPCO”) application for regulatory approvals to acquire Oklahoma-sited wind generation (“Application”).¹ Golden Spread’s Reply Brief responds to SWEPCO’s contention that PURA § 14.101 does not apply to acquisitions of generation outside of Texas,² even when such generation will be used to serve Texans and has the potential of being included in rates regulated by the Public Utility Commission of Texas (“Commission”). In the alternative, SWEPCO misapplies PURA § 14.101 by suggesting that § 14.101’s requirement that the acquisition be in the public interest only applies in the context of retail rates charged by SWEPCO³ and does not include the broader public interest of Texans across the State and does not include the express factors for consideration enumerated in PURA⁴ § 14.101 and elsewhere in PURA. If SWEPCO’s proposed treatment of PURA § 14.101 and PURA § 37.056(c)(3) are applied in conjunction, the Commission could not consider the

¹ SWEPCO and its affiliate, Public Service Company of Oklahoma (“PSO”) are seeking to acquire the wind facilities jointly. When referring to SWEPCO and any or all of its affiliates, this Initial Brief uses the term “AEP.”

² Southwestern Electric Power Company’s Initial Post-Hearing Brief at 52 (Mar. 9, 2020) (“SWEPCO’s Initial Brief”).

³ *Id.* at 53.

⁴ Public Utility Regulatory Act, Tex. Util. Code §§ 11.013-66.017 (PURA).

potential that the Selected Wind Facilities would have an adverse effect on the service that other Texas utilities can provide customers.

VIII. SALE, TRANSFER, MERGER ISSUES (P.O. ISSUE NOS. 13, 14, 15, 16, 17, 18)

SWEPCO incorrectly reads PURA § 14.101 not to apply to the Selected Wind Facilities because they are sited in Oklahoma. Commission Staff correctly notes that “the statute covers more than just physical presence in the state through the use of the language ‘system in the state’.”⁵ Siting a project in Oklahoma does not mean that it does not affect “an operating unit or system in this state.”⁶ The operations of the Selected Wind Facilities directly relate to service provided in Texas.⁷

In the alternative, SWEPCO incorrectly applies a very narrow view of the public interest evaluation by the Commission required under PURA § 14.101. SWEPCO contends:

PURA § 14.101(b) provides that the Commission consider several factors. The public interest standard in this provision overlaps with the controlling CCN standard in this case—the probable lowering of costs to customers.⁸

As indicated by this plain statement, SWEPCO seeks to bypass most of the factors enumerated in PURA §§ 14.101 and 37.056 to only focus on one piece of § 37.056(c)(4) related to the rates that SWEPCO ultimately will charge its retail ratepayers. PURA §§ 14.101 and 37.056 include the following factors for assessing within a CCN docket whether a project is in the public interest:

⁵ Commission Staff’s Initial Brief at 35 (Mar. 9, 2020) (citing PURA § 14.101(a)(1)) (“Staff’s Initial Brief”).

⁶ PURA § 14.101(a)(1).

⁷ See SWEPCO Initial Brief at 13 (discussing the selection of the Selected Wind Facilities in part because of their ability to deliver power to SWEPCO’s retail loads.)

⁸ SWEPCO Initial Brief at 53 (citations omitted).

Statutory Cite	Statutorily Required Factor for Consideration of Whether the Selected Wind Facilities are in the Public Interest
§ 14.101(b)(2)(A)	whether the transaction will adversely affect the health or safety of customers or employees
§ 14.101(b)(2)(B)	whether the transaction will result in the transfer of jobs of citizens of this state to workers domiciled outside this state
§ 14.101(b)(2)(C)	whether the transaction will result in the decline of service
§ 14.101(b)(4)	whether the transaction is consistent with the public interest
§ 37.056(c)(1)	the adequacy of existing service
§ 37.056(c)(2)	the need for additional service
§ 37.056(c)(3)	the effect of granting the certificate on the recipient of the certificate and any electric utility serving the proximate area
§ 37.056(c)(4)	(A) community values; (B) recreational and park areas; (C) historical and aesthetic values; (D) environmental integrity; (E) the probable improvement of service or lowering of cost to consumers in the area if the certificate is granted (emphasis added)

As the above chart illustrates, SWEPCO is in essence asking the Commission to give a cursory and incomplete review and to improperly ignore statutorily established factors in assessing whether the Selected Wind Facilities are in the public interest. A Commission decision that lacks consideration of statutorily set factors for consideration, much less the vast majority of the statutorily set factors, risks being arbitrary and capricious.⁹ SWEPCO's effort to place blinders on

⁹ As explained in *Tex. Ind. Elec. Consumers v. Public Util. Comm'n*, "An agency's decision is arbitrary and capricious or results from an abuse of discretion if the agency: (1) failed to consider a factor that the legislature directs it to consider; (2) considers an irrelevant factor; or (3) weighs only relevant factors that the legislature directs it to consider but still reaches a completely unreasonable result." *Tex. Ind. Elec. Consumers v. Public Util. Comm'n*, 2018 WL 3353225 (Tex. App. Austin 2018) (citing *City of El Paso v. Public Util. Comm'n*, 883 S.W. 2d 179, 184 (Tex. 1994)).

the Commission so that it only sees potential SWEPCO retail rates, unable to see evidence on any other considerations, defies the public interest and the plain language of PURA.

A. Excluding Power Projects Sited Outside of Texas from PURA § 14.101 Review Would Produce Illogical Results and Incentives.

Applying a reading of PURA § 14.101 such that it would not apply to out-of-state projects would render certain portions of the statute meaningless and would produce otherwise peculiar results. For instance, under PURA § 14.101(b)(2), the Commission considers whether the transaction will result in the transfer of jobs of citizens of the state to workers domiciled outside this state;¹⁰ or result in the decline of service.¹¹ In the context of these factors, PURA § 14.101(b)(4) requires a determination of whether the transaction is in the public interest.

Traditional statutory interpretation tenets require that a statute be read in a way that does not yield unreasonable results.¹² Reading the PURA § 14.101 requirement to consider the move of jobs out-of-state but not to apply to out-of-state generation projects would produce such an impermissibly unreasonable result. The statute expressly discusses the potential transfer of jobs outside of Texas whether or not the project at issue resides in-state or out-of-state. SWEPCO witness Mr. Godfrey testifies that fifteen projects submitted through the Request for Proposal (“RFP”) process, including the Selected Wind Facilities, were located in Oklahoma and four projects were located in Texas.¹³ The choice of the Selected Wind Facilities included a choice to utilize operations outside of Texas. Excluding non-Texas projects from consideration under PURA § 14.101 would defeat the purpose of the provision and would suggest that the transfer of jobs to out of state workers could only be considered for projects actually sited within Texas. Such a reading yields an unreasonable result because, if the project is in Texas, then there would be no loss of jobs to another state. The provision only makes sense if an out-of-state project leads to jobs being lost to that state where the project is sited. Likewise, this interpretation of exempting

¹⁰ PURA § 14.101(2)(b).

¹¹ PURA § 14.101(2)(c).

¹² See *Barshop v. Medina County Underground Water Conservation District*, 925 S.W. 2d 618, 629 (Tex. 1996) (A statute should not read to create an absurd result).

¹³ Direct Testimony of Jay F. Godfrey, SWEPCO Ex. 3 at 12.

out-of-state projects would create an incentive wholly contrary to the statute as it would encourage regulated utilities to site projects outside of Texas to sidestep the regulation in PURA § 14.101.¹⁴ It is impossible to reconcile a policy goal of promoting jobs in Texas with a reading that allows a utility to avoid the statute by choosing to pursue projects outside of Texas. Consequently, PURA § 14.101 should apply to the Selected Wind Facilities.¹⁵

The combination of the proposed exemption from evaluation under PURA § 14.101(b)(2)(C) and avoidance of PURA § 37.056(c)(3) would create a fundamental void in the Commission's analysis of the Application. If SWEPCO's proposed treatment of PURA § 14.101 and PURA § 37.056(c)(3) are applied in conjunction, the Commission could not consider the potential that the Selected Wind Facilities would have an adverse effect on the service that other Texas utilities can provide customers. For example, during the hearing it became clear that SWEPCO has given no consideration to the potential impact on congestion and related increased in transmission cost related to the Selected Wind Facilities that could negatively impact the service provided by other utilities. If neither PURA § 14.101 nor PURA § 37.056(c)(3) are applied in this Docket, SWEPCO might be able to construct the Selected Wind Facilities without ever taking these concerns into account. This would set a dangerous precedent for future applications, and in fact could create perverse incentives for utilities to exploit the CCN process for their localized gain at the expense of other Texas utilities.

The potential for the Selected Wind Facilities and their transmission issues to affect other Texas members of SPP is real. The state border has no bearing on the potential that the Selected Wind Facilities could result in the decline of service for Texas customers, including customers of Golden Spread and other SPP transmission ratepayers in Texas. Siting in Oklahoma does not

¹⁴ *Entergy Gulf States, Inc. v. Summers*, 282 S.W. 3d 433, 446 (Tex. 2009) (Hecht, J., concurring). ("Courts will not follow the letter of [the law] when it leads away from the true intent and purpose of the legislature, and to conclusions inconsistent with the general purpose of the [statute]. A too literal [interpretation] of a statute, which would prevent the enforcement of it according to its true intent, should be avoided").

¹⁵ Golden Spread does not suggest that the Selected Wind Facilities will create a transfer of jobs outside of the State. The point is that this factor in PURA § 14.101 indicates that the Legislature anticipated that out-of-state projects would be subject to PURA § 14.101 like in-state projects.

exclude the potential for AEP's wind projects to have adverse effects on service in Texas,¹⁶ though using an Oklahoma site is the only basis under which SWEPCO claims PURA § 14.101 does not apply.

SWEPCO has failed its burden to show that the proposed project is in the public interest under PURA § 14.101(b)(4) because it only provides evidence regarding issues for electricity consumers in SWEPCO's corner of the State without consideration of the effects on *all Texans*. SWEPCO in various instances has stated that it has not considered whether the Selected Wind Facilities will have an adverse effect on service for Golden Spread Members, as it asserts that only a reduction in energy costs for SWEPCO is needed to meet the public interest standard.¹⁷ SWEPCO has not offered any evidence to support an inference that any claimed benefits to SWEPCO customers outweighs the risk of potentially adverse effects on other Texas electricity customers. This broader reach of public interest connects the general public interest review in PURA § 14.101 with the more specific analysis of the effects on proximate utilities in PURA § 37.056(c)(3). As evidenced by other dockets related to other non-ERCOT utilities' generation CCN, SWEPCO's argument related to the applicability of PURA § 14.101 does not comport with the mainstream interpretation of bundled Texas investor-owned utilities.¹⁸ As such, SWEPCO has not shown that the Selected Wind Facilities meet the public interest requirement of PURA § 14.101(b)(4). Commission Staff concludes that "without additional guarantees to protect Texas

¹⁶ See, e.g., Direct Testimony of Johannes P. Pfeifenberger, SWEPCO Ex. 9 at 9-10; Tr. at 517: 19-518: 8 (Pfeifenberger Direct) (Feb. 25, 2020) (SWEPCO witness Mr. Pfeifenberger explaining that additions of wind generation can increase congestion costs significantly which can prompt new transmission upgrades that would be charged to Golden Spread and other SPP transmission ratepayers in Texas).

¹⁷ See, e.g., SWEPCO Initial Brief at 5 (contending that because the Selected Wind Facilities are in Oklahoma, its effects on other Texas utilities should be ignored in this Docket); *Id.* at 54 (describing the effect on service only in the context of reducing energy costs for SWEPCO)

¹⁸ See, e.g., *Application of Southwestern Public Service Company for Approval of Transactions with ESI Energy LLC, and Invenergy Wind Development North America LLC, to Amend a Certificate of Convenience and Necessity for Wind Generation Projects and Associated Facilities in Hale County, Texas and Roosevelt County, New Mexico, and for Related Approvals*, Docket No. 46936, Southwestern Public Service Company's Application for Approval of a Certificate of Convenience and Necessity and Related Relief (Mar. 21, 2017) at 4 ("SPS requests that the Commission find it is in the public interest for SPS to acquire and develop the SPS Wind Facilities [in Texas and New Mexico] (Public Utility Regulatory Act ("PURA") § 14.101)"); *Application of Entergy Texas, Inc. for Approval of an Amendment to Certificate of Convenience and Necessity and for Public Interest Determination for Purchase of Unit 1, Union Power Station*, Docket No. 43958 (requesting a Commission determination that the proposed purchase of Union Power Station Power Block 1 [sited in Arkansas] is consistent with the public interest, under PURA § 14.101).

ratepayers, this CCN application has a high potential to negatively impact Texas ratepayers.”¹⁹ Staff’s conclusion that CCN application has a high potential of negative impact is particularly astute when the effects on Texans outside of the SWEPCO retail service territory are considered.

B. Even Assuming *Arguendo* that Neither PURA § 37.056(c) Nor PURA § 14.101 Apply, the Application Still Fails to Meet a Basic Public Interest Review.

Even if the review under PURA § 14.101 and PURA § 37.056(c) were stripped away, the Commission still would need to apply a public interest review of the Application. The Commission’s charge in PURA is to protect the public interest.²⁰ This mandate to promote the public interest cannot be evaded, even if PURA § 14.101 and PURA § 37.056(c) are excluded from consideration. The Application fails the public interest of Texans with or without consideration of PURA § 14.101 and PURA § 37.056(c). The Application fails to address many fundamental issues related to transmission and congestion for consumers all over Texas and therefore cannot, absent the imposition of conditions to protect other Texas members of SPP, meet even a general public interest review.

CONCLUSION

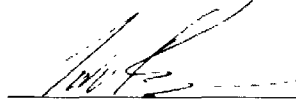
Accordingly, Golden Spread prays that if the Commission grants SWEPCO’s Application, it condition that approval on SWEPCO holding other SPP transmission ratepayers in Texas harmless from any potential increases in transmission charges and congestion that might result from the Selected Wind Facilities. To mitigate the effects of the Selected Wind Facilities on SPP transmission ratepayers in Texas and as part of holding them harmless, Golden Spread asks that SWEPCO be required to expeditiously acquire firm transmission and to accept the direct assignment of upgrade costs associated with the Selected Wind Facilities as part of this Application is found in the public interest. Further, Golden Spread requests that if SWEPCO decides to construct a generation-tie, it be required to seek Commission authority and provide comparative analysis of the cost and benefit of transmission alternatives. Golden Spread further prays that it

¹⁹ Staff’s Initial Brief at 35.

²⁰ See PURA § 11.002(a).

be awarded all such other and further relief to which it may show itself entitled, both in law and equity.

Respectfully submitted,



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ATTORNEYS FOR GOLDEN SPREAD
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CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing has been hand delivered or sent via facsimile transmission, electronic mail, or first class United States mail, postage prepaid, to all parties of record in this proceeding on this the 17th day of March, 2020.

